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[ORIGINAL CIVIL JURISDICTION]

ADRIAN CLARK, J.

February 5, 1937.

CHANG KAM LONG Etc.

v.

H. H. BUSFIELD & ANOR.

[SINGAPORE SUIT No. 1068 of 1932]

Trustees—removal of—appointment of new ones—Court's discretion.

Principles, upon which the Court in its general equitable jurisdiction may remove trustees, discussed.

A Chinese testator died in 1916 leaving considerable immovable property in the Colony. The original trustees of his will were replaced by new trustees appointed from time to time. As a result of extensive litigation in connection with the testator's estate and of the heavy burden of expenditure on solicitors' costs and trustees' remuneration, the nett income distributable amongst the beneficiaries became very small. In 1933, on an application made by them, the then trustees (the defendants in this suit) were allowed by way of their remuneration five per cent. of gross receipts. One of these trustees was a solicitors' clerk who was appointed trustee on an application filed by his employers on behalf of the plaintiff. The bulk of the testator's property was in Penang, while the trustees themselves resided in Singapore. They appointed agents to collect the rents of the Penang property and paid them a further and separate five per cent. commission on the amounts collected. On a motion for the removal of the trustees and for the appointment of new trustees:—

Held, that it is very undesirable that Solicitors' clerks should be appointed trustees of estates on appplications by the firms by whom they are employed.

Held further, that the Court could remove paid trustees and substitute therefor other paid trustees where all the beneficiaries so desired if and when the change would result in substantial saving to the estate regardless of whether the trustees had committed any breaches of trust.

MOTION.

Hoalim, for S. H. Cheah, Deputy Registrar of the Court, appointed to represent the class of beneficiaries interested in the corpus of the estate of the testator (applicant).

Laycock, for the defendants (respondents).

Oehlers, for the plaintiff.

Munro, for Choo Yun Kam.

Mallal, for Thio Sze Long.

Cur. Ad. Vult.

ADRIAN CLARK, J.—This is a motion in an administration suit which was commenced in 1932 and is still proceeding, the record at present consisting of over 170 documents filed in connexion with many different summonses and motions.

The motion is for the removal of the present trustees of the Will and for the appointment of new trustees.

The motion is supported by an affidavit to which affidavits in reply have been filed, one by the Defendant-Trustee Soh Beng Lim and one by C. C. Dunman as attorney of the Defendant-Trustee Busfield.

These affidavits contain much controversial matter but the following facts contained in them do not appear to be disputed.

The Testator died in 1916 leaving property valued for purposes of Estate Duty at over $650,000.

At various times new trustees have been appointed by the Court and there has been much litigation in connexion with this estate both in Penang and in Singapore.

The gross income of this very large estate is at present under $15,000 and the nett income distributable among beneficiaries is only a few hundreds of dollars.

Lawyers' costs have accounted for approximately $60,000 of the estate, trustees' remuneration to some $14,000 and trustees' expenses to some $16,000. Meanwhile the only benefits reaching beneficiaries amount to $125 a month.

In 1930 in Suit 868 of 1921 the second defendant Soh Beng Lim and one Choo Sou San were appointed trustees. I can trace no affidavit as having been filed in support of the summons asking for their appointment. I do not know who Choo Sou San was but it is not suggested that Soh Beng Lim was in any way related to the Testator or his family. He was the clerk of Messrs. Braddell Bros. who, on behalf of the plaintiff, filed the application for the appointment, in respect of a very large estate, in which they were acting, of one of their own clerks as a paid trustee of that estate. It is stated in the affidavits before me that this was done by agreement and at the request of the beneficiaries or some of them. That may be so, but I hope nevertheless that such an appointment will never again be countenanced by this Court. It is important not only that justice should be done but also that it should be clear to all that it has been done; it is equally important that not only should such an appointment in fact be based on proper grounds but that it should be clear to all concerned that it is so based. It is so generally known that in this Colony the clerks of solicitors are often in much closer touch with Asiatic clients than are the solicitors themselves that such an appointment *must* be open to suspicion. There was perhaps nothing illegal in the appointment; there may in fact have been nothing improper in it; but I am clearly of opinion that it is most undesirable that lawyers' clerks should be appointed trustees of estates, especially, as in this case on an application by the firms by whom they are employed and who thereafter may be employed by their own clerks to act as solicitors for them in their capacity as trustees. I hope this is and will remain an isolated instance of such a happening.

I mention this because, although this fact is not the main ground of it, it has not been without influence on my present decision. The question of the relationship between lawyers' clerks and their employers' clients is one that requires the closest supervision by all who are concerned with the administration of justice and with the good of the legal profession. Before the Advocates & Solicitors Ordinance was amended, last year, there were a round dozen of lawyers' clerks in Singapore who had criminal records, and it is notorious that senior lawyers' clerks, who have had no ostensible means of livelihood beyond their salaries, have sometimes been involved in transactions suggesting other and hidden means of acquiring wealth.

Soon after the appointment as trustees of Soh Beng Lim and of Choo Shou San (in June of 1930) Choo Shou San seems to have gone to China and Soh Beng Lin appointed as his co-trustee Mr. Busfield, a Chartered Accountant and as such a suitable person to act as a trustee.

By an Order of Court dated 13th November 1933 the trustees, on an application made by them, were allowed 5% of *gross* receipts by way of remuneration, an unusually heavy reward and one higher than that granted to the immediately preceding trustees who had been allowed 5% on rents only.

In addition to this, the bulk of the property of the estate being in Penang, while the trustees themselves resided in Singapore, the trustees employed agents there to collect the rents and paid those agents a further and separate 5% commission on the amounts collected.

In these circumstances the present application is made asking (in amendment of the motion as filed) that the directors of Messrs. Cheong Koon Seng & Co., Ltd. be appointed trustees they being prepared to do the whole work for an inclusive fee of 2% on capital and 5% on income and to give security in the sum of $25,000 (which for some reason unknown to me was never required of the present trustees).

As I have said, the affidavit in support of the application contains allegations of mismanagement by the trustees and affidavits in reply have been filed to explain or refute such allegations.

If it were necessary to investigate such allegations, this could only be done by the trial of issues with the expenditure of much time and with the additional burden of heavy legal costs.

I do not, however, think that it is necessary. The present trustees are not persons selected by the testator himself. They are professional trustees only; paid servants of the estate. Their supersession by other paid trustees is requested by or supported by or on behalf of all the beneficiaries interested in the estate. The appointment of the new trustees will cause a substantial saving to the estate and they are persons whose reputation is well known to this Court and who are prepared to give security for the proper administration of the estate.

That is quite sufficient in my opinion to justify the order prayed for.

Since, however, there has in fact been no investigation before me of any allegations made, it is fair to add that I do not base my order on any consideration of breach of trust or other irregularity having been committed by the trustees who are being displaced. I do so on the more general grounds to which I have already referred.

I am sorry that the last two judgments which I deliver before leaving the Bench of this Colony should appear to contain criticisms of proceedings in which members of the legal profession have been concerned. The criticisms are aimed less at individuals than at practices which have been allowed to arise and to exist unchecked. I have discussed such matters with leading members of the legal profession and I know well that they are as anxious as I am about these and similar matters. I know well that many lawyers' clerks bear and deserve excellent reputations and that the great bulk of the legal profession in this Colony can be trusted to think of the interests of their clients first and to remember all the time that they are Officers of this Court. It is not enough, however, that such lawyers should themselves refrain from any practice which is open to criticism—it is the duty of the profession as a whole to take the initiative in order to stamp out altogether any questionable practice and to regulate the employment of lawyers' clerks and the relations of such clerks with those who employ their masters.

The order will be that Messrs. Cheong Hock Chye and Wee Sin Choe be appointed trustees in place of Messrs. Soh Beng Lim and H. H. Busfield subject to their giving security with one surety (to be approved by the Registrar) in the sum of $25,000; that the joint remuneration of such new trustees be 2% on capital and 5% on income and that no other remuneration be payable for the management of the estate. The new trustees will be substituted as defendants in this suit and all proceedings will be stayed in it except the application as to payment of estate duty which is now pending. Any further proceeding will be taken only by personal leave of the Judge. The discharged trustees will bring in their accounts within one month from this date and will pay any balance due from them to the estate direct to the new trustees. They will hand over all securities, documents of title, books etc. in their possession to the new trustees. There will be the usual vesting and other consequential orders. The costs of the displaced trustees up to date will be paid out of the estate and, on the passing of their final accounts, the payment of 5% commission to Estate & Trust Agencies Ltd. will not be surcharged

by the new trustees. The costs of this motion will be costs in the cause.

A draft order embodying the above terms in more formal language should be submitted to me for approval.

Solicitors for applicant—*Mendis & Ahlip.*
Solicitors for Plaintiff—*Claude da Silva & Co.*
Solicitors for Defendants—*Braddell Bros.*
Solicitors for Choo Yun Kam—
Allen & Gledhill.
Solicitors for Thio Sze Long—
Mallal & Namazie.

[ORIGINAL CIVIL JURISDICTION]
ADRIAN CLARK, J.
February 5, 1937.

WONG LIN THYE v. WONG YEEN YONG & ANOR.

[SINGAPORE SUIT No. 6 of 1935]
[SUMMONS No. 6 of 1937]

Practice—Costs of unnecessary proceedings —disallowance of—Judge's discretion.

When a party has been given leave by the Court to intervene in an administration suit and to have the conduct thereof his costs are in the discretion of the Court.

SUMMONS IN CHAMBERS Adjourned into Open Court.

The facts and arguments sufficiently appear from the judgment below.

Mallal, for 2nd defendant and Tan Ho Oon & Co., Ltd., (trustees of the Will and estate of Wong Yoon Fee deceased)—Applicants.

Burke, for Cheong Sow Ying, a party having conduct of this suit—Respondent.

Hoalim, for Wong Kai Woon and Wong Kai Yat (infants).

Cur. Ad. Vult.

ADRIAN CLARK, J.—The Summons in this Administration Suit which is now before me for adjudication is Summons No. 6 of 1937, dated 6th January 1937. By that Summons the new Trustees, recently appointed by order of the Court in these proceedings, ask whether Cheong Sow Ying is entitled out of the estate to be paid costs incurred by her in these proceedings prior to the 10th August 1936.

This Administration Suit is of that type which has given me, during the time I have sat on the Bench of this Colony, much anxiety.

The Testator died in 1926 appointing two of his sons, Wong Yeen Yong and Wong Foo Yong, to be his executors and trustees.

Wong Yeen Yong proved the will in 1926 but Wong Foo Yong, being then a minor, did not take out double probate till 1933 and took charge, as a trustee only from January 1934.

In January of 1935 a beneficiary who was entitled to have expended for her marriage expenses the sum of $2,000 started this administration suit.

It is still going on, and judging by similar administration suits that I have had before me, it is liable to go on indefinitely.

Up till now the Index of Documents on the Record shows that 134 separate documents have been filed. They refer to nearly 30 different proceedings, by summons and otherwise.

The estate was originally sworn at a little over $50,000. The costs payable to the solicitors concerned already amount, approximately, to some 12 to $15,000. Of these some $6,000 represent the costs referred to in this Summons.

So far I have not been satisfied that the persons amongst whom the Testator intended that his property should be divided have in any practical way benefited by this wealth of proceedings.

There is something obviously wrong in this state of affairs, something that makes one fear that the administration of justice has not progressed as far as one hoped it had done since the times that were parodied by Dickens in the case that he called *Jarndyce* v. *Jarndyce*.

I am not suggesting that the proceedings taken in this case could not all be justified under our Civil Procedure Rules nor that the solicitors concerned have not done a great deal of work in the matter for which, if it really had to be done, they are entitled to be paid, either by their clients or out of the estate. I know, indeed, that the great bulk of the legal profession in this Colony are equally anxious to see proceedings such as these simplified and their cost rendered less prohibitive.

It might be well to appoint a Committee to revise entirely our present procedure but, even under the existing rules, a good deal can be done and should be done to lessen the burden on an estate of costs, which very often are merely thrown away, and which, by diminishing (sometimes to vanishing point) the shares of beneficiaries under the will or trust, defeat the very objects for which proceedings purport to have been instituted. It will not do to lead the public to believe, even if unjustly, that any officer of this Court commences or institutes these proceedings merely to divert large portions of the estate into his own pockets, in the shape of fees, which, sometimes, the beneficiary for whom he appears could never pay out of his own share of the estate.

It seems to me that orders in these proceedings, which are usually disposed of merely as one item in a long and tedious Chambers-list, may have been often made too much as a matter of course.